



# Town of Duxbury Massachusetts Planning Board

## Minutes 08/15/11

The Planning Board met at the Duxbury Town Hall, Small Conference Room, on Monday, August 15, 2011 at 7:00 PM.

Present: Amy MacNab, Chairman; George Wadsworth, Vice-Chairman; Cynthia Ladd Fiorini, Clerk; John Bear, Josh Cutler, and Brian Glennon.

Absent: Jennifer Turcotte.

Staff: Thomas Broadrick, Planning Director; and Diane Grant, Administrative Assistant.

Ms. MacNab called the Planning Board meeting to order at 7:02 PM.

### OPEN FORUM

Alternative Energy Committee: Mr. Cutler reported that the Alternative Energy Committee has issued a Request for Qualifications for a project that would utilize a capped landfill on Mayflower Street to install solar arrays.

Community Preservation Committee (CPC): Mr. Bear reported that the CPC has submitted recommended regulations to the Board of Selectmen, and also suggested a possible name of Howland Landing Park. Mr. Cutler suggested that the town consider naming the site Rowley Park as a memorial to Ms. Ruth Rowley, a land advocate who recently passed away.

Zoning Bylaw Review Committee (ZBRC): Mr. Wadsworth reported that this group is working to tighten Zoning Bylaws so they are less confusing. The ZBRC is reaching out to the Planning Board and other groups for input. Ms. MacNab invited any Board members to let Mr. Wadsworth know about any areas to be flagged.

Affordable Housing Trust: Ms. Ladd Fiorini reported that a mortgage buydown program is being offered to help first-time homebuyers who meet income eligibility. Mr. Broadrick added that a lottery was recently offered for five units at the Reserve at Duxbury (formerly Duxbury Crossing).

Ruth Rowley: Ms. MacNab noted that she is saddened by the passing of Ms. Ruth Rowley, a hero. Ms. MacNab noted that Mr. Broadrick was the only town official who attended a recent memorial service in her honor. The family appreciated Mr. Broadrick's attendance.

Discussion on Open Forum: Mr. Broadrick advised that Town Counsel, Atty. Robert S. Troy, had written two memos on how to continue Open Forum according to Open Meeting Law. In addition, Mr. Cutler stated that he appreciated the thoughtful response from Senator Hedlund's office to the Board's letter objecting to the elimination of Open Forum at public meetings. Mr. Broadrick noted that a new agenda topic, "New Business," has been added to Planning Board agendas in order to cover any new items that may come forward.

878 Tremont Street, Duxbury, MA 02332; Telephone: 781-934-1100 x 148; Fax: 781-934-1137

**REQUEST FOR RELEASE OF PERFORMANCE BOND AND ESCROW ACCOUNT FUNDS FOR FREEMAN FARMS DEFINITIVE SUBDIVISION / ELM STREET REALTY TRUST**

Present for the discussion was the applicant's representative, Mr. John Moon. Board members reviewed a letter from the applicant requesting release of performance bond funds and escrow account funds for Freeman Farms subdivision, following the street acceptance approval for the subdivision roads at Annual Town Meeting. Ms. Grant explained that there are two escrow account funds for two modifications and one performance bond account.

Mr. Glennon noted that during an earlier request for reduction in the performance bond, the Board was waiting to make sure that grass was established on edges of the sidewalks. Mr. Broadrick responded that once it became a public way it became a town issue.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Cutler provided a second, to approve the release of all outstanding funds plus interest in a performance bond account and two escrow account funds for Freeman Farms / Elm Street Realty Trust.

**VOTE:** The motion carried unanimously, 6-0.

**ANR PLAN OF LAND: SUMMER STREET / KOPLOVSKY**

Present for the discussion were the owner, Mr. Koplovsky, and his representative, Mr. Steve Kotowsky of Webby Engineering. Mr. Broadrick explained the intent of the plan is to sell land to the town and also subdivide an adjacent piece of land for future development. Three lots are proposed: Lot A has 2.8 acres; Lot B has 1.3 acres; and Lot C has 27 acres and is the parcel to be sold to the town. Annual Town Meeting approved this purchase in March 2011. Each of the three proposed lots has the required 200 feet of frontage.

Mr. Glennon noted that the ANR application seems to meet all requirements. Mr. Broadrick noted that the applicant could choose to further divide Lots A or B in the future, and Ms. MacNab pointed out that if five lots or more are proposed in total, the Inclusionary Bylaw would be triggered.

Mr. Wadsworth clarified that the applicant appears to be proposing an 81L perimeter plan along with an ANR plan, and Mr. Kotowski confirmed this as true. He noted that he had met with the Assessor's office already for new parcel ID numbers.

Mr. Bear provided some background, noting that the town has owned land around the perimeter of Lot C for many years. The purchase of this land by the town will provide access to that land. Mr. Koplovsky noted that there is a dam on the currently-owned town land, and this purchase will provide access to that site.

**MOTION:** Mr. Glennon made a motion, and Mr. Cutler provided a second, to approve an ANR Plan of Land entitled, "Plan of Land in Duxbury, Mass., Prepared for Edward Koplovsky," prepared by Webby Engineering Associates, Inc. of Plympton, MA, dated August 1, 2011, and stamped and signed by Joseph E. Webby, Jr., PLS – one sheet, as not requiring approval under Subdivision Control Law.

**VOTE:** The motion carried unanimously, 6-0.

TOWN CLERK  
11-29 PM 12:39  
DUXBURY, MASS.

**ANR PLAN OF LAND: 71 OCEAN ROAD NORTH, 195, 207 213 & 219 GURNET ROAD / HUMMOCK LLC**

No one was present to represent the applicant. Ms. MacNab provided background, noting that the Board had previously endorsed an 81L plan for five pre-existing nonconforming lots with pre-existing structures. The applicants then repeatedly attempted to capitalize on the 81L exemption; however the applications did not pass muster with the Board or the Zoning Board of Appeals (ZBA). A previous plan showed lot lines that did not exist and that application was firmly denied by the ZBA. The Zoning Enforcement Officer has since requested that the structures, which are dilapidated, be razed. Mr. Broadrick advised the Board that three of the structures had been razed and two remain at this time.

Mr. Broadrick stated that the current ANR application is for two lots. Ms. MacNab noted that the LLC ownership had been dissolved for a period of time but has now been re-established with Mr. Michael Emerson as sole signator. She cautioned that the Board needs to be confident regarding who the applicant is and if the application meets ANR requirements.

Mr. Wadsworth noted that each lot does show at least 200 feet of frontage; however access is questionable due to wetlands. Mr. Broadrick pointed out that the plan shows delineated wetlands. Lot 1 shows plenty of dry land on the northwest corner, and Lot 2 shows a 25-foot easement that could be used for access.

Mr. Glennon noted that ANR endorsement does not confirm buildability status and it is not clear whether the applicants would be able to build on it. Mr. Bear noted the ANR may improve the area. Ms. MacNab noted that the lots are under water during high tides.

**MOTION:** Ms. Ladd Fiorini made a motion, and Mr. Wadsworth provided a second, to approve a Plan of Land entitled, "Plan of Land in Duxbury, Massachusetts," dated August 5, 2011, prepared by Orwig Associates, 9 South Pasture Lane, P.O. Box 2132, Duxbury, MA 02331, stamped and signed by Neil J. Murphy, RPLS – one sheet.

**VOTE:** The motion carried unanimously, 6-0.

Board members signed the mylar and two paper copies of the ANR plan.

**ZBA REFERRAL: 41 HAWKINS PLACE / SWENSEN**

No one was present to represent the application. Board members reviewed this application for a special permit to construct a 23' x 25' two-story addition to a pre-existing nonconforming structure on a lot of 11,389 square feet. Mr. Broadrick noted that the lot coverage is currently 14.7 percent and the proposed coverage is 15.7 percent. Board members calculated and determined that it meets the "three percent rule" under ZBL Section 410.4, which allows an additional three percent coverage beyond the difference between 20,000 square feet and the actual lot size. Board members calculated that 17.2 percent coverage could be allowed under the three percent rule.

**MOTION:** Mr. Glennon made a motion, and Mr. Cutler provided a second, to defer judgment to the Zoning Board of Appeals regarding a special permit for 41 Hawkins Place / Swensen to construct a 23' x 25' two-story addition to a pre-existing nonconforming structure on a lot of 11,389 square feet, noting that there are no significant planning issues.

**VOTE:** The motion carried unanimously, 6-0.

**OTHER BUSINESS**Engineering Invoice:

**MOTION:** Mr. Wadsworth made a motion, and Ms. Ladd Fiorini provided a second, to approve payment of Horsley Witten Group invoice #30027 in the amount of \$3,742.50 for services related to 489 Washington Street / Duxbury Yacht Club.

**VOTE:** The motion carried unanimously, 6-0.

Meeting Minutes:

**MOTION:** Mr. Wadsworth made a motion, and Mr. Bear provided a second, to approve meeting minutes of July 11, 2011 as amended.

**VOTE:** The motion carried unanimously, 6-0.

Driver's Retreat WPOD Line Amendment: Board members reviewed a letter dated July 20, 2011 from Mr. Joseph Grady, Conservation Administrator, regarding the Conservation Commission's decision to recommend amendment of the Wetlands Protection Overlay District (WPOD) for this property at the applicant's request. Mr. Wadsworth noted that this recommendation conflicts with the philosophy of protecting uplands that abut wetlands. Mr. Broadrick agreed that the Conservation Commission may not be considering "the big picture." Mr. Broadrick noted that the Planning Board will be holding a public hearing for this amendment that is scheduled go before Special Town Meeting in October 2011.

Ms. MacNab noted that the Comprehensive Plan did not apply the WPOD in its build-out analysis; use of the WPOD for dwellings was not anticipated because it is prohibited. Mr. Glennon noted that Zoning Bylaws (ZBL) Section 404.1 state that the purpose of the WPOD is to include a "wetlands buffer zone." He stated that WPOD lines can be moved only when a mistake has been made on the WPOD map and it meets other criteria set forth in ZBL Section 404.9, "Special Permit for Use and Construction."

Mr. Broadrick noted that the study that resulted in the creation of the WPOD in 1971 used elevation or distance to wetlands to determine the recommended WPOD line. Mr. Glennon noted that Zoning Bylaws provide the foundation of the WPOD regulations. Mr. Bear suggested that the Board chairman and Planning Director meet with the Conservation Commission to discuss the intent of the WPOD and its implications on development and the Comprehensive Plan. Mr. Wadsworth offered to join in the meeting and suggested that a letter be sent to the Conservation Commission. Mr. Broadrick expressed reservations about meeting with the Conservation Commission, noting that it is not guided by Zoning Bylaws. Board members agreed that Mr. Broadrick should pursue a meeting because it is important to communicate with the Conservation Commission regarding whether there has been a change in thinking regarding the WPOD intent, and the Conservation Commission should be made aware of implications to the Comprehensive Plan.

Construction Cost Estimates for July 2011: Mr. Bear asked whether a new lot was being created off of Summer Street, and Mr. Broadrick offered to look into the matter.

Commonwealth Capital: Mr. Broadrick noted that the state Office of Energy and Environmental Affairs had scored the Town of Duxbury a rating of 85 in a letter dated July 5, 2011. He also noted that the state has declared that the Commonwealth Capital rating will not apply for the 2012 fiscal year and therefore will not affect grant applications.

ZBA Decision, 21 River Lane: Board members reviewed a decision dated July 11, 2011 regarding a remand order on an applicant's appeal of a Zoning Board of Appeals (ZBA) decision regarding a Planning Board request for zoning enforcement on construction of a guest house on a lot that already contained a primary dwelling. The remand was ordered in light of a change in the definition of "accessory structure" by citizen petition at Annual Town Meeting 2011. The decision affirmed the Zoning Enforcement Officer's decision to allow the guest house, subject to conditions that the guest house shall not have a stove plus either or both a refrigerator and sink, and that the structure shall not be used as a dwelling. Ms. MacNab commented that the decision was well-written.

Mr. Wadsworth noted that, according to the decision, the only difference between a dwelling and an accessory structure would be the presence of a stove. Ms. MacNab agreed that the decision does not match the original intent of the Zoning Bylaw. Mr. Glennon asked why anyone would want a bedroom in an accessory structure if that structure was constructed according to the original intent, such as a shed or workout room. Mr. Bear noted that the presence of beds is not on a building permit checklist. However, the presence of a stove and/or refrigerator would be flags.

Mr. Glennon noted that it appears that most accessory structures like this may be "higher end" and result in only a remote possibility of anyone renting or living in it. Ms. MacNab noted that the impact of in-laws living in an accessory structure is the same as any renter. Mr. Cutler noted that if an accessory structure like this guest house is constructed and sold twenty years later, there is no inspection to determine if the accessory structure is being used as a dwelling. Ms. MacNab noted that after six years a second dwelling is granted by-right; deed restrictions do not apply. Mr. Glennon suggested that it may be helpful to review evidence to determine if over time accessory structures tend to become rental units. Mr. Broadrick offered to review building permits for accessory structures. It was agreed that this research may be helpful to Mr. Wadsworth's input as Planning Board representative on the current Zoning Bylaw Review Committee.

ANR Process: Mr. Glennon asked if the Board can authorize the Planning Director to sign ANR plans. Mr. Broadrick responded that the Board can designate a signee on its behalf. Nevertheless, Board members signed the two ANR plans approved at tonight's meeting.

## ADJOURNMENT

The Planning Board meeting adjourned at 8:42 PM. The next Planning Board meeting will take place on Monday, August 22, 2011 at 7:00 PM at Town Hall, Small Conference Room, lower level.

## MATERIALS REVIEWED

- Memo from R.S. Troy dated 07/11/11 re: policies and procedures for public comment
- Memo from R.S. Troy dated 07/13/11 re: revised policy on public comment
- Letter from Sen. Hedlund dated 07/25/11 re: Open Meeting Law response to PB letter
- Open Meeting Law FAQ
- Letter from J. Moon of Elm Street Realty Trust dated 06/08/11 re: request for release of funds for Freeman Farms Definitive Subdivision
- PB meeting minutes of 02/14/11 re: Freeman Farms As-Built approval and reduction of performance bond
- ANR application and materials submitted 08/01/11 for 0 Summer Street / Koplovsky
- 0 Summer Street GIS map, Assessors property card, and Pictometry orthophoto
- ANR application and plans submitted 08/08/11 for 71 Ocean Road North, 195, 207, 213 & 219 Gurnet Road / Hummock LLC
- Additional application materials submitted separately by attorney for Hummock LLC on 08/08/11
- GIS map, Pictometry orthophoto, and Assessor's property cards for Hummock LLC ANR

TOWN CLERK  
11 SEP 29 PM 12:40  
DUXBURY, MASS.

PLANNING BOARD MINUTES

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Approved 09/26/11

- ZBA special permit application materials for 41 Hawkins Place / Swensen, submitted to the Planning office on 07/19/11
- GIS map, Assessor's property card, and Pictometry orthophoto for 41 Hawkins Place
- Horsley Witten invoice #30027 (\$3,742.50) dated 07/05/11 re: Duxbury Yacht Club ASPR
- Meeting minutes of 07/11/11
- Letter from Conservation Administrator dated 07/20/11 re: Cape Verde Terrace ConCom recommendation to amend WPOD map
- Construction Cost Estimates dated July 2011
- Duxbury Commonwealth Capital rating
- ZBA Decisions:
  - 21 River Lane Remand (*affirmed subject to conditions*)
  - 489 Washington Street / Duxbury Yacht Club (*granted w/ conditions*)
  - 668 Tremont Street / Duxbury Fire Department radio tower (*variance granted*)
  - 5 Chestnut Street / Verc Realty Trust -Dunkin Donuts(*granted w/ conditions*)
  - 33 Railroad Avenue / Millbrook Square LLC sign (*granted w/conditions*)
  - 2 Ingalls Grove / McCrystal (*approved w/ conditions*)
  - 48 Hicks Point Road / Gilson (*granted*)

TOWN CLERK  
11 SEP 29 PM 12:40  
DUXBURY, MASS.